

"American tragedy" alluded to in the sub-title is the *false invocation* of the "anti-aggression spirit of Nürnberg and the U.N. Charter" to *justify* our unforgivable destruction of Vietnam. But Taylor reaches this conclusion tortuously.

He first discusses basic concepts: law of war; war crime; illegal superior order; difference between just and unjust war. He dispels the myth that punishment of war crimes was invented at or limited to Nürnberg, and the even more scurrilous notion that there is, or should be, no law of war. He makes bold asides, e.g., "The rights and wrongs of Hiroshima are debatable, but . . . Dresden and Nagasaki were war crimes . . ." (p. 143); and the Bay of Pigs and Anglo-French Suez fiascos were "largely due to the attackers' feelings of guilt" (p. 185).

In analyzing various aspects of U.S. intervention in Vietnam in the light of "Nürnberg," Taylor takes at first cautious and very restricted views. Among attenuating or exculpating circumstances, he claims that "individuals of the yellow race are hard for our soldiers to identify" (p. 152)! There is excessive emphasis on the alleged uncertainty or shadowiness of some aspects of the law of war, and excessive indulgence for "military necessity."

Taylor ridicules "benighted Pentagon publicity" that represented our air bombardment of North Vietnam as "harmless to human beings," but he also disagrees with General Gavin that it was "militarily unsound and morally wrong": "I can see no sufficient basis for war crimes charges based on the bombing of North Vietnam" (p. 142). Whether the U.S. intervention in Vietnam constitutes "aggression" or "crime against peace" is declared to be an appropriate but unanswerable question.

Some arguments, *because* formalistically impeccable, reveal the full calamity in which the country finds itself. Taylor reminds us that Congress—not the President!—is abstractly "authorized" by the Constitution to abrogate American treaty obligations, even those of the U.N. Charter against the international use or threat of force, and could "in a fit of frenzy" authorize the execution of all prisoners-of-war (p. 116). It would be equally correct to state that the President could empty all Federal penitentiaries or order the bombing of U.S. cities. To make (internationally illegal) *use* of the fact that the Constitution "of course is superior to treaties . . ." (p. 116) denies, as Taylor himself shows, the quintessence of Nürnberg. Yet, midway in the book, the draft resister is told that his allegation of the illegality of the U.S. intervention under the U.N. Charter and other treaties can neither be denied nor authorita-

Nuremberg and Vietnam: an American Tragedy. By Telford Taylor. (Chicago: Quadrangle Books [A New York Times Book], 1970. Pp. 207. \$5.95, cloth; \$1.95, paper.)

Professor Taylor of Columbia Law School was one of the top Nürnberg protagonists. From late 1946 until Spring 1949, as Brigadier-General and Chief of Counsel of the U.S. Nürnberg War Crimes Tribunals, he prosecuted almost ten times as many leaders of the Third Reich as were tried by the preceding International (Four-Power) Nürnberg Tribunal.

His analysis of the relevance of "Nürnberg" to Vietnam is tightly reasoned, wide-ranging, thoroughly expert and yet very personal and deeply disturbing, first of all to the author. Only on the last page does the centrality of his thesis become clear—that the U.N. Charter and Nürnberg were twins, both designed to oppose violence and foster cooperation: the

tively established; in any case, Congress could overrule any of them, and the draftee has to fight even in an internationally illegal war.

But the reader must read on; these are not the *final* views of an increasingly tormented conservative who until 1965 supported U.S. intervention in Vietnam as "aggression-checking undertaking in the spirit of the U.N. Charter" (p. 206). What in a lesser book would have to be criticized as contradictions constitute here the phases of "the education of Telford Taylor." A Picasso knows human anatomy. Especially toward the end, the book rises to a different level of sternness. It refers with increasing indignation to the enormities of American policies in Vietnam; juxtaposes shocking parallels between Nazi massacres in the Ukraine and Greece, and U.S. mass killings in Vietnam; and refers to the "mere gook rule."

He rejects Dean Rusk's accusation of North Vietnam's aggression as definitive (p. 184). While previously (p. 116) despairing that the Supreme Court could ever "unravel the tangle of treaties, agreements and resolutions," he eventually shows that certain justifications of the war (such as contained in Presidential statements) are *prima facie* indefensible. One of Taylor's reasons for opposing a "deus ex machina" role for the Supreme Court by declaring the war illegal (under Nürnberg or otherwise) appears to be his demand for moral redemption: Since Congress has for years so deeply identified itself with the war, "the President's course is to be checked by the Congress and not by the Court." He pointedly refers to impeachment.

Of great factual and doctrinal importance is Taylor's departure from strict separation between "crime against peace" and "war crime" by insisting that the war should not have been started because the decision-makers must have known that it could only be waged in the manner in which it has been. Whatever the original U.S. intentions, they "have by now been so completely submerged under the avalanche of death and destruction that they are no longer credible as descriptions of the operation as a whole" (p. 188).

Upon publication, the book received wide publicity mainly for two reasons: (1) Taylor's strong criticism of American military leadership in Vietnam since 1954, and his demand to hold that leadership responsible "from General Westmoreland down" (p. 181); and (2) his demand to extend the responsibility to commanders who *did not order*, but out of criminal negligence *failed to prevent*, atrocities by their subordinates. Two other of his conclusions deserve

attention: (a) "given the course the war has taken and the depth and breadth of the opposition to its conduct" (p. 204), nobody must any longer be compelled to serve in it; and (b) "major responsibility for the war and the course it took . . . in the massive lethal dimensions [since 1964]" rests with "the Rusks, McNamaras, Bundys and Rostows" (p. 205).

Such a book should not be just grist for the mill. How can any impact be made on this country and its leadership? Soon after General Taylor's book made the news, it had to compete with the "battle hymn for Lt. Calley." Taylor's book also actually contains explanations of this phenomenon.

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